

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,	:	CASE NO. 1:04-CR-276
	:	
Plaintiff-Respondent,	:	
	:	JUDGE DONALD C. NUGENT
	:	
vs.	:	
	:	<u>DEFENDANT'S SENTENCING</u>
JOHN W. PEROTTI,	:	<u>MEMORANDUM</u>
	:	
Defendant-Petitioner.	:	

John Perotti, by and through undersigned counsel, respectfully submits the instant Sentencing Memorandum to support his request for a sentence that is sufficient but not greater than necessary to achieve the statutory goals of sentencing pursuant to Title 18, United States Code §§ 3553(a) and 3661.

Respectfully submitted,

/s/ Jeffrey B. Lazarus

JEFFREY B. LAZARUS
Assistant Federal Public Defender
1660 W. 2nd Street, Suite 750
Cleveland, Ohio 44113
Telephone: (216) 522-4856
Facsimile: (216) 522-4321
jeffrey_lazarus@fd.org

Attorney for John Perotti

MEMORANDUM

After being found guilty of being a felon in possession of ammunition, on September 28, 2005, this Court sentenced Mr. Perotti to 210 months of imprisonment.¹ Dkt. 181. Mr. Perotti was found to qualify for an enhanced sentence under the Armed Career Criminal Act (“ACCA”) under 18 U.S.C. § 924(e), which escalated his sentencing exposure from to ten years in prison, to fifteen years to life. After serving approximately twelve years of his 210-month sentence, Mr. Perotti was able to have his sentence vacated following *Johnson v. United States*, 135 S. Ct. 2551, 2015 WL 2473450 (June 26, 2015). He now appears before this Court for a re-sentencing with the application of the ACCA. His statutory sentencing range is now zero to ten years and he has already served two years beyond the statutory maximum sentence.

According to the presentence report, Dkt. 256, Mr. Perotti sentencing guideline range is 92 to 115 months, at total offense level 24, Criminal History Category V. Mr. Perotti asks this Court to impose a sentence of 92 months for the following reasons. Mr. Perotti has completed a number of during his twelve years of incarceration. A list of the education courses he has completed is attached as Exhibit A along with a number of certificates of completion from those courses. The Supreme Court has held a defendant’s rehabilitative efforts upon a re-sentencing are a proper consideration under 18 U.S.C. § 3553(a). *See Pepper v. United States*, 562 U.S. 476, 490 (2011) (the Supreme Court held “when a defendant’s sentence has been set aside on appeal and his case remanded for resentencing, a district court may consider evidence of a defendant’s rehabilitation

¹ Mr. Perotti’s original district court proceedings were before the Honorable Kathleen O’Malley. Mr. Perotti’s case was reassigned to this Court on in 2011. *See* Non-Docket Entry dated January 24, 2011.

since his prior sentencing and that such evidence may, in appropriate cases, support a downward variance from the advisory Guidelines range.”).

Additionally, Mr. Perotti asks this Court to consider the number of physical health issues that plague Mr. Perotti. Mr. Perotti has suffered a number of ailments during his incarceration and the Bureau of Prisons has been unable to effectively manage his health. Mr. Perotti has hepatitis, he has chronic pain in his knees and back, he has heart issues, he suffers from Post-Traumatic Stress Disorder, and he has high blood pressure.

The statutory sentencing factors require this Court to impose a sentence that is sufficient but not greater than necessary. Mr. Perotti respectfully requests this Court, in weighing all the 18 U.S.C. § 3553(a) factors, find that a sentence of 92 months, is sufficient but not greater than necessary.

Respectfully submitted,

/s/ Jeffrey B. Lazarus

JEFFREY B. LAZARUS

1 Assistant Federal Public Defender

1660 W. 2nd Street, Suite 750

Cleveland, Ohio 44113

Telephone: (216) 522-4856

Facsimile: (216) 522-4321

jeffrey_lazarus@fd.org

Attorney for John Perotti

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2016, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's system.

/s/ Jeffrey B. Lazarus

JEFFREY B. LAZARUS

Assistant Federal Public Defender